

## **Declaration of Public Policy <sup>1</sup>**

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage loss and medical benefits to a worker suffering from a work-related injury or disease. Wage loss benefits are not intended to make an injured worker whole; they are intended to assist the injured worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

A worker's removal from the work force due to a work-related injury or disease has a negative impact on the injured worker, the injured worker's family, the employer, and the general public. Therefore, the main objective of the workers' compensation system is to return injured workers to work as soon as possible after suffering a work-related injury or disease.

Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to obtain benefits speedily and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

Title 39, chapters 71 and 72, MCA Workers' Compensation and Occupational Disease Acts, respectively, must be construed according to their terms and not liberally in favor of any party.

The legislature's intent regarding stress claims, often referred to as "mental-mental claims" and "mental-physical claims", does not allow for compensation under Montana's Workers' Compensation and Occupational Disease Acts. The legislature recognizes that these claims are difficult to verify objectively and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. The legislature has the authority to define the limits of the workers' compensation and occupational disease systems.

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<sup>1</sup> §39-71-105, MCA (2003)

## Insurance Coverage Requirements

If you are an employer or an employee, the Workers' Compensation and Occupational Disease Acts apply to you. An employer who has an employee in service under any appointment or contract of hire, expressed or implied, oral or written, must elect to be bound by the provisions of compensation Plan 1 (self-insured), Plan 2 (private insurance companies) or Plan 3 (Montana State Fund).

### Employment Exempted

The Workers' Compensation and Occupational Disease Acts may not apply to any of the following employments:

- Household and domestic employment
- Casual employment
- Dependent member of an employer's family for whom an exemption may be claimed by the employer under the Federal Internal Revenue Code
- Sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company
- Real estate, securities or insurance salesperson paid solely by commission without a guarantee of minimum earnings
- A direct seller
- Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States
- A person performing services in return for aid or sustenance only, except employment of volunteers
- Employment with a railroad engaged in interstate commerce, except railroad construction work
- An official, including a timer, referee, umpire or judge, at a school amateur athletic event
- A person performing services as a newspaper carrier or freelance correspondent
- Cosmetologist's services and barber's services
- A person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the reservation
- A jockey who is performing under a license issued by the Board of Horse Racing, from the time the jockey reports to the scale room prior to a race through the time weighed out and has acknowledged in writing that jockey is not covered while performing services as a jockey
- Trainer, assistant trainer, exercise person or pony person who is providing services under the Board of Horse Racing while on the grounds of a licensed race meet
- An employer's spouse
- A petroleum land professional
- An officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company
- A person who is an officer or a manager of a ditch company
- Service performed by an ordained, commissioned or licensed minister of a church
- Independent Contractors
- Providers of companionship services or respite care if a family member or legal guardian hires the person providing care.

## Life of a Claim<sup>2</sup>

Accidents do happen and when a Montana worker files a workers' compensation claim, the life of that claim is dictated primarily by statute. Progress of a typical workers' compensation claim in Montana is determined by the following guidelines:

- Once the injury occurs, the injured worker or their authorized representative has 30 days from the date of injury to notify the employer (employer, managing agent or superintendent in charge of the work) or the insurer. [§39-71-603, MCA]
- The employer then has six days from date of notification of an injury to report the injury to the insurer or the Department of Labor and Industry (DLI). [§39-71-307, MCA, and ARM 24.29.801]
- The claimant or the claimant's representative has 12 months from the date of injury to file a claim. [§39-71-601(1), MCA] The claim filing time can be extended up to an additional 24 months if it can be proven that the worker was somehow prevented from filing the claim because of something the employer or the insurer said or did, or if the injury was latent or the worker lacked knowledge of disability. [§39-71-601(2), MCA]
- The signed claim form or First Report of Injury and Occupational Disease (FROI) (form ERD-991) can be submitted to the employer or sent directly to the insurer, the adjuster or the DLI. [§39-71-601(1), MCA]
- The insurer/adjuster shall accept or deny a claim within 30 days of receipt of a signed claim for compensation by the claimant, the employer or the claimant's representative. If the claim is denied, the worker is notified in writing of the denial. [§39-71-606, MCA]
- If further investigation is needed before the insurer accepts liability and the 30 day limitation for a decision on compensability is due to expire, the insurer/adjuster may pay wage loss and/or medical benefits without such payment being an indication of admission of liability or waiver of any right of defense. [§§39-71-608 and 39-71-615, MCA]
- The first 4 days or 32 hours (whichever is less) of total wage loss is not compensable, but a claimant may use sick leave during this time. A claimant cannot use sick leave and receive wage loss benefits at the same time. [§39-71-736, MCA]
- In addition to using an emergency room or urgent care center, the claimant has the right to select the first treating physician (within the treating physician definition). The insurer must then approve changes of treating physicians. The insurer has the right to deny payment for any unauthorized medical referrals and treatments. [§39-71-1101, MCA, and ARM 24.29.1510]
- The physician bills the insurer/adjuster directly. Payment is made according to a fee schedule. [§39-71-704(2) and (3), MCA] Once the insurer has accepted a claim, the medical provider must accept the fee scheduled reimbursement, as payment in full and the claimant is not responsible for any balance.

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<sup>2</sup> MCA (2003)

- The claimant is responsible for payment of: (1) unauthorized treatment, (2) medical care not related to the injury, (3) medical services if treatment is not received for 60 months, (4) secondary medical services and palliative or maintenance care unless specifically covered, and (5) medical procedures specifically excluded. [ARM 24.29.1401 and §39-71-704, MCA]
- Temporary total disability (TTD) benefits are based on 66⅔% of the claimant's average weekly gross wages, subject to a maximum of the state's average weekly wage, and are paid bi-weekly until the claimant returns to work or has reached maximum medical improvement (MMI). [§§39-71-701 and 39-71-740, MCA] If the claimant is classified as permanently totally disabled (PTD), benefits can continue until the claimant reaches retirement age. [§39-71-710, MCA]
- If prior to attaining maximum medical improvement (MMI) and due to medical restrictions, the claimant returns to work at less than the wages received at the time of injury, they may be entitled to temporary partial disability (TPD) benefits. Temporary partial disability is limited to 26 weeks unless extended by the insurer. [§39-71-712, MCA]
- If after reaching MMI, the claimant has a residual impairment, greater than zero, the insurer is required to pay out the permanent partial disability (PPD) liability bi-weekly, unless the claimant requests a lump sum payment. [§§39-71-703 and 39-71-741, MCA]
- Other permanent partial disability liability is based on age, education, loss of earning capacity and work capacity restrictions. These criteria are determined based on the specifics of each individual case. [§39-71-703, MCA]
- If the worker is precluded from returning to the job they held at the time of injury and suffers an actual wage loss or has an impairment of 15% or greater, the worker is eligible for rehabilitation services. The insurer designates a rehabilitation provider and rehabilitation services are provided with the goal of returning the claimant to work as soon as possible. If a rehabilitation plan is established which indicates some type of retraining, the claimant may be eligible to receive monies for tuition, fees, books and other reasonable and necessary retraining expenses. The worker may also receive biweekly benefit payments based on the temporary total disability rate. [§39-71-1006, MCA] Financial assistance is also available for reasonable travel and relocation for training and job-related expenses, subject to a maximum amount of \$4,000. [§39-71-1025, MCA]
- Medical benefits may remain available for at least 60 months (5 years) from the last date of service. The insurer may not be required to furnish palliative or maintenance care after the claimant has achieved MMI. [§39-71-704(1)(e), MCA]

## **Workers' Compensation System Administration**

The Montana DLI, Employment Relations Division (ERD) provides a wide variety of services and regulation related to workers' compensation and safety.

### **Workers' Compensation Regulation Bureau**

The **Carrier Compliance Unit** monitors compliance of private workers' compensation carriers (Plan 2). The unit also licenses professional employer organizations and processes extraterritorial agreements.

The **Contractor Registration Unit** ensures construction businesses with employees register and comply with workers' compensation requirements. The law provides protection from liability for workers' compensation claims for contractors who use the service of other registered construction contractors.

The **Independent Contractor Central Unit** issues decisions on employment relationships for the Department of Revenue, Labor Standards, Unemployment Insurance, Human Rights and Workers' Compensation. The unit also issues Independent Contractor (IC) Exemptions Certificates.

The **Medical Regulations Unit** develops fee schedules to provide an effective and equitable method of health care cost containment. Medical fee schedules are established by the unit and utilized by insurers to reimburse medical providers.

The **Self-Insurance Unit** administers a program of employers who elect to be self-insured for workers' compensation (Plan 1).

The **Subsequent Injury Fund Unit** certifies workers with permanent impairments that have a substantial obstacle to obtaining employment. They administer the funds that are used to offset claim costs associated with subsequent injuries to these workers.

The **Uninsured Employers Fund Unit** ensures employers and employees are protected under the Workers' Compensation and Occupational Disease Acts. The unit enforces coverage requirements for all employers, pays benefits to injured workers whose employers did not have workers' compensation coverage and manages the fund from which benefits are paid.

## **Workers' Compensation Claims Assistance Bureau**

The **Claims Unit** ensures compliance with the Workers' Compensation and Occupational Disease Acts relating to benefits and claims. The unit also regulates attorney fees, administers the occupational disease evaluation process and provides assistance to insurers, attorneys and injured workers.

The **Data Management Unit** ensures compliance with claims reporting standards, maintains the workers' compensation database system and provides a comprehensive annual report on workers' compensation to the governor and the legislature.

The **Mediation Unit** provides an alternative method of resolving workers' compensation benefit disputes before the dispute goes to the Workers' Compensation Court. This is a mandatory, non-binding process.

## **Occupational Safety & Health Bureau**

The **Occupational Safety & Health Bureau** conducts inspections of public employers, performs on-site consultations for private employers, and inspects coal mines and sand and gravel operations throughout the state. The Bureau provides safety and occupational health training for both public and private employers.

## Workers' Compensation Market

Montana employers have options for obtaining workers' compensation coverage for their employees.

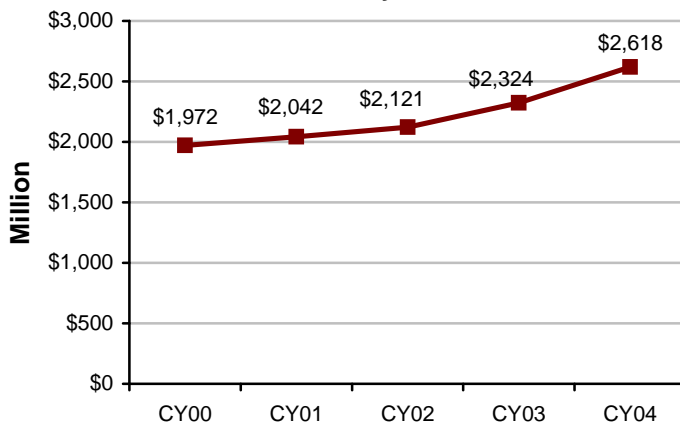
Employers with sufficient cash reserves may qualify as self-insured (Plan 1), either individually or by joining with other employers in their industry to form a self-insured group. Montana currently has 38 individual self-insured employers, four private groups (128 employers) and five public groups (405 employers).

Employers may obtain coverage with private insurance companies (Plan 2) in the voluntary market. During calendar year 2005, there were 462 private insurance companies who were authorized to write workers' compensation insurance in Montana.

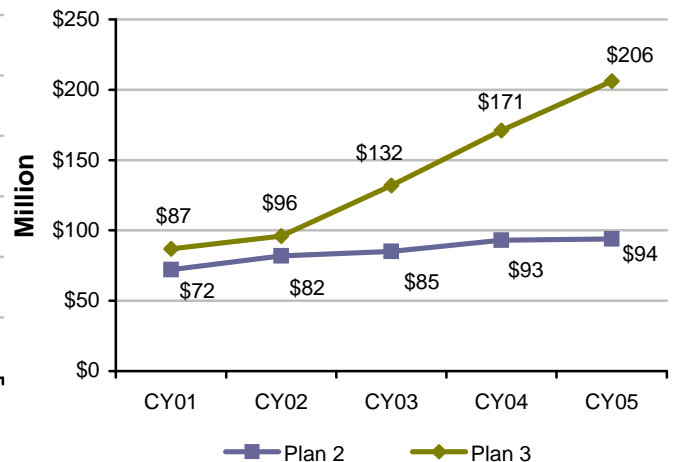
Employers can insure through Montana State Fund (Plan 3). As the insurer of last resort, the Montana State Fund assures all Montana employers can provide workers' compensation insurance for their employees.

The changes in insurers' market share are reflected in the graphs and table below.

**Exhibit 1.1**  
**Gross Annual Payroll<sup>2</sup>**  
**Plan 1 – By Calendar Year**



**Exhibit 1.2**  
**Premium Dollars**  
**Plans 2 and 3 - By Calendar Year**



**Exhibit 1.3**  
**Market Share**  
**By Plan<sup>1</sup> and Calendar Year**

Calendar Year	2000	2001	2002	2003	2004	2005
Plan 1 – Payroll	\$1,971,770,980	\$2,042,192,981	\$2,121,728,801	\$2,324,840,487	\$2,618,537,774	N/A <sup>2</sup>
Plan 2 – Premium	\$77,129,965	\$72,431,388	\$81,725,533	\$85,081,186	\$92,915,175	\$93,774,300
Plan 3 – Premium	\$69,411,843	\$86,813,640	\$95,558,150	\$131,804,047	\$171,439,374	\$206,425,227

**Note:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund

<sup>2</sup>Calendar year 2005 Gross Annual Payroll data was not available when this report was published.